IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2407 OF 2006

Mrs. Milan V. Mhatre
Age-47 yrs., Occ. Business
Residing at 101, Govind Nagar,
'C' Building, 'A' Wing,
Bhayander (West), Thane. **... Petitioner**

Versus

1. **The State of Maharashtra**
   through the Principal Secretary
   Department of Home Affairs
   Mantralaya, Mumbai-32.

2. **Mr. Babasaheb Paradhe,**
   Age-Adult, Occu-Service,
   Sub-Divisional Magistrate,
   Thane, having his office
   within the Collectorate Compound,
   Thane.

3. **Superintendent of Police (Rural)**
   having his office near Collector
   Office, Thane.

4. **Gilbert John Mendensa,**
   Age-52 years, Occ. Business,
   Residing at "Tezy Villa",
   Bakul Street, Bhayander (West),
   Thane-401 101. **... Respondents**

Mr. Nitin Pradhan, Senior Advocate with Mr. S.S. Patwardhan, Advocates for the Petitioner
Mr.V.R. Manohar, Senior Counsel with Mr. A.P. Mundargi, Senior Advocate with Mr. Manoj Mohite and Mr. Sandesh Patil, Advocates for Respondent No.4.
Mr. A.S. Gadkari, APP for the State

CORAM : S.B. MHASE,
& S.R. SATHE, JJ.
DATED : 12th DECEMBER, 2006

P.C. :-

1. Heard learned Senior Advocate Mr. Nitin Pradhan for the Petitioner and learned Senior Advocate Mr. V.R. Manohar for Respondent No.4 and learned APP Mr. A.S.Gadkari for Respondent Nos. 1 to 3.

2. The Petitioner who is a citizen of Bhayander (West), Thane has filed this Petition under Article 226 of Constitution of India and prayed that a Writ of Mandamus or any other appropriate Writ be issued against Respondent Nos. 1 to 3 who are State of Maharashtra, Sub-Divisional Magistrate, Thane and Superintendent of Police (Rural), Thane respectively, directing them to implement the order dated 31/12/1993 passed by the Sub-Divisional Magistrate, Thane under section 56 of Bombay Police Act against Respondent No.4.

3. Petitioner has also prayed that Respondent No.2 be directed to implement the order dated 11/01/1994 passed by him in externment Case No.12/1993 under section 56 of the Bombay Police Act against Respondent No.4. Similarly, the Petitioner has also prayed that Respondent No.2 be directed to withdraw the impugned order passed by him dated 06/03/2006 whereby he

cancelled the proposal made in respect of externment of Respondent No.4.

4. Shri Pradhan, learned senior Advocate for the Petitioner strenuously argued before us that though the externment order was passed against Respondent No.4 vide Exh-D of the Petition on 31/03/1993 the same has not been implemented and as such it is necessary to give direction to Respondent No.2 to implement the same. At the outset it must be mentioned that Exh-D which is dated 31/12/1993 is not an order passed by the Sub-Divisional Magistrate but it is the notice issued under section 59 of Bombay Police Act by the Sub-Divisional Magistrate, Thane to Respondent No.4 calling upon him as to why he should not be externed. So, there is no need to give any direction in respect of this document dated 31/12/1993.

5. It is an admitted fact that on 11/01/1994, the Sub-Divisional Magistrate, Thane while exercising his powers under section 56(A,B) of the Bombay Police Act directed that the Respondent No.4 be externed from Thane, Brihanmumbai, Nashik, Raigad and Pune for a period of one year from the date of externment and shall not enter in the above districts without prior

written permission of the Government. According to learned Senior Advocate for the Petitioner, this order has been confirmed even by the High Court vide order dated 20/07/2000 but even then the same was not implemented at any time. While considering as to whether there is any substance in the arguments advanced by the learned Senior Advocate in this behalf, it must be noted that admittedly, the Respondent No.4 had preferred an appeal against the said order dated 11/01/1994 and the said appeal was disposed of on 31/05/1994 by conditional order. As a result of the said order, Respondent No.4 was directed to observe 3 conditions *viz.,* he should give attendance in the Bhayander Police Station after every 15 days till 11/01/1996. *Secondly,* he should not possess any weapon with him till 11/01/1996 and if he is already in possession of any weapon, he should deposit the same with Bhayander Police Station for above mentioned period and *lastly,* he should not commit offence of any nature till the above mentioned date. It was also made clear by the said order that on breach of any of the above mentioned conditions the order dated 11/01/1994 will come in operation. It is also clear that the appeal preferred by the Respondent No.4 i.e. Appeal No. EXT 1394/23-SPL-5 was finally disposed of by the

Secretary to the Government of Maharashtra (Appeals & Security), Home Department on 12/10/1994 whereby earlier conditional order dated 31/05/1994 was re-confirmed. When Respondent No.4 challenged the said order by filling Criminal Writ Petition No.1298/1994 and 1244/1994 the said Writ Petitions were dismissed by this Court on 20/07/2000. Relying on the observations made by the learned Single Judge of this Court in the above mentioned Writ Petitions, Shri Pradhan, learned Senior Advocate for the Petitioner submitted that after the dismissal of the said Writ Petitions, it was necessary for the Respondent Nos. 1 to 3 to extern the Respondent No.4 and thereby implement the order of externment. However, it must be noted that initial order of externment was in fact, modified in the appeal. Naturally, what was to be implemented was the order passed in the appeal. There is nothing on record to indicate that the said order passed in the appeal has not been implemented. Moreover when the above Writ Petitions were heard and dismissed the period i.e. till 11/01/1996 was also over. So, there is no substance in the Petitioner's claim that the Respondent No.2 has to implement the order dated 11/01/1994 passed in externment case No.12/1993.

6. If we carefully peruse the synopsis as well as Petition and consider the arguments advanced by the learned Senior Advocate for the Petitioner then it appears that it is based on wrong assumption that order dated 06/03/2006 passed by the Sub-Divisional Magistrate, Thane withdrawing the proposal in respect of externment or cancelling the proposal regarding externment was pertaining to initial proposal of externment which was made in 1993. With all due respect to the learned Senior Counsel, it must be said that none of the Senior Advocates pointed out to this Court that the order dated 06/03/2006 has nothing to do with the proposal of externment order made against Respondent No.4 in 1993 and it is in fact pertaining to altogether different proposal bearing No. टे-2/ह.प्र./1613/2000 dated 22/02/2000. If this position would have been noticed during the course of arguments we would not have expressed that on 06/03/2006 there was no necessity to pass any such order and it is an exercise in totality and the learned Senior Counsel for Respondent No.4 would not have conceded to that position.

7. Be that as it may now let us scan the order dated 06/03/2006 on merits. From the perusal of the

order dated 06/03/2006, it is evident that the proposal of externment which has cancelled was the proposal dated 22/02/2000. The Sub-divisional Magistrate Thane has categorically observed in his order that there is no record to show that during last five years, there were complaints from the public against the Respondent No.4 or that Senior P.I., Bhayander Police Station has registered any offence against Respondent No.4 during last five years. So, taking into consideration all those aspects and also the fact that not even any non-cognizable complaint was filed against Respondent No.4, Sub-divisional Magistrate cancelled the proposal dated 22/02/2000 regarding externment. The learned Senior Advocate for the Petitioner has neither pointed out any infirmity in the said order passed on 06/03/2006, nor he has shown that the Sub-divisional Magistrate, Thane has acted without jurisdiction. No error of law in the said order is pointed out by the learned Senior Advocate for the Petitioner. So, under such circumstances, we have no hesitation to hold that this Petition does not warrant exercises of extraordinary powers under 226 of the Constitution of India.

8. Hence, Petition is rejected.

(S.R. SATHE, J.) ***(S.B. MHASE, J.)***